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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1955

No. 38

RAYMOND C. ARMSTRONG,

*Petitioner,*

v.

MARY R. ARMSTRONG,
GENERAL MOTORS CORPORATION, et al.,

*Respondents.*

## BRIEF FOR THE PETITIONER

ROBERT N. GORMAN,
JAMES N. HENGELBROK,
808 Traction Building,
Cincinnati 2, Ohio,

JULIUS R. SAMUELS,
918 First National Bank Bldg.,
Cincinnati 2, Ohio,

*Attorneys for Petitioner.*

THE JOHNSON & HARDIN CO., LAW PRINTERS
CINCINNATI, OHIO

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## BRIEF FOR THE PETITIONER

### OPINION BELOW

The opinion of the Supreme Court of Ohio is reported in 162 Ohio St. 406, 123 N. E. (2nd) 267.

### JURISDICTION

The judgment of the Supreme Court of Ohio was entered on December 15, 1954, and an application for re-hearing filed in accordance with Rule XX of the Rules of the Supreme Court of Ohio was denied on January 5, 1955. The petition for certiorari was filed on March 9, 1955, and an order granting certiorari was entered April 25, 1955. The jurisdiction of this Court is invoked under the provisions of U. S. Code, Section 1257 (3).

## STATUTES INVOLVED

The first section of Article IV of the Constitution of the United States is primarily involved:

"Section 1. Full Faith and Credit.—Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

### FLORIDA

The sections of the Florida statutes provide:

"Ch. 65 Sec. 65.06. Bills of divorce may be brought against defendants residing out of the state, and service shall be effected upon them as in other cases in chancery.

"Ch. 48 Sec. 48.01. Service of process by publication may be had in any of the several courts of the state and upon any of the parties mentioned in 48.02 in any suit or proceedings:

"4. For divorce or annulment of marriage;

"10. In any other suit or proceeding, not hereinabove expressly mentioned, wherein personal service of process or notice is not required by the statutes or constitution of this state or by the constitution of the United States."

### OHIO

Section 3105.03:

"Except in an action for alimony alone, the plaintiff shall have been a resident of the state at least one year immediately before filing the petition. Actions for divorce or for alimony shall be brought in the county of which the plaintiff is and has been a bona fide resident for at least ninety days immediately preceding

the filing of the petition, or in the county where the cause of action arose. The court of common pleas shall hear and determine the case, whether the marriage took place, or the cause of divorce occurred, within or without the state."

## QUESTIONS PRESENTED

1. Did the Ohio courts err in refusing to give full faith and credit to the entire decree rendered by the courts of Florida in granting a divorce to the petitioner and denying the respondent alimony?

2. Could the Ohio court award alimony to the respondent out of stock of the General Motors Corporation when the Florida court had denied the respondent any portion of property, which had a situs in Florida, without violating the full faith and credit clause of the Constitution of the United States?

As to the first question, petitioner maintains that since the decree was entered at the matrimonial domicile of the parties in Florida, and respondent had *actual* notice of the proceedings, due process of law was satisfied, and the decree should have been afforded entire full faith and credit by the Ohio courts.

The record clearly shows that Armstrong was at all times a resident of the State of Florida, and that he had registered in his own name 2200 shares of the stock of General Motors (R. 125). The record also shows that both the parties owned real estate, a home at 922 Northwest Eighth Street Road, in Miami, Florida (R. 33, 125, 245), so that the Florida court could have enforced an alimony award against Armstrong as to the property even in his absence. The Florida court had jurisdiction in this cause, both to award a decree for divorce to petitioner, and to deny alimony to respondent.

## STATEMENT OF CASE

Raymond C. Armstrong and his wife, Mary C. Armstrong, were married on June 18, 1917 at Cincinnati, Ohio. In 1922 or early 1923 they left Ohio and took up their residence in Miami, Florida. Aside from a short period of time spent in the Isle of Pines, they have ever since been residents, voters and taxpayers of Miami, Florida, where they claimed the homestead exemption (R. 33, 62, 220). While they owned a farm in Indiana and later one in Ohio, the undisputed evidence is that since 1928 their matrimonial domicile has been at Miami, Florida. They owned a home, paid taxes and voted in Miami, Florida, which was the only domicile of both until the latter part of 1950 (R. 239, 247).

Friction developed between the Armstrongs, and in October of 1950 Mrs. Armstrong, the respondent, left Florida and came to Ohio. On April 16, 1951, Armstrong filed suit in the Circuit Court of Dade County, Florida, praying for divorce, denial of alimony and other relief (R. 199-212). Service was obtained by publication and a copy of the petition was mailed to Mrs. Armstrong in accordance with the laws of Florida (R. 240, 246).

However, the respondent did not return to Florida. Instead on May 8, 195[illegible] she brought an action in partition in Ohio for a partitioning and an accounting of the real estate situate in Ohio, which action is still pending. However, after receiving notice by publication and notice by mail of Armstrong's action for divorce, filed in Florida, her attorney in Ohio, on May 22, 1951, wrote to his attorney in Florida as follows (R. 303; Pltf.'s Ex. J):

> "I do not intend to enter Mrs. Armstong's appearance in the complaint for divorce. I presume that complaint will result in a decree, and that you will prosecute that matter to an early conclusion. That

being so, the allegations of the complaint are such that I shall be compelled in proceedings to be filed here to claim the decree was procured upon false allegations. Thus it now appears these parties are in and headed into costly litigation that could have been avoided if Mr. Armstrong had given serious thought to the testimony available here and elsewhere relating to the manner in which these parties accumulated their holdings and had been more reasonable in his ideas of how the matter should be settled."

Under the Ohio law Mrs. Armstrong would not have been considered a resident of Ohio for the purpose of filing an action for divorce until November 10, 1951 (R. 46). Section 3105.03, Ohio Revised Code (formerly Section 8003-3, Ohio General Code, formerly Section 11980, Ohio General Code).

On October 2, 1951, upon presentation of the report of the Master Commissioner, the Circuit Court of the Eleventh Judicial District of Dade County, Florida, *granted Armstrong a divorce and denied Mrs. Armstrong alimony* (R. 246-9). That decree said in part:

"This court, therefore, finds the defendant has not come into this court in good faith or made any claim to the equitable conscience of the court and has made no showing of any need on her part for alimony. It is, therefore, specifically decreed that no award of alimony be made to the defendant and that the legal and equitable title to the real property above described was vested in the plaintiff as of the date of the purchase of the same by the plaintiff and the said legal title to said property be and the same is hereby vested in fee simple absolute in the plaintiff, Raymond C. Armstrong, without further deed or conveyance from the defendant."

Subsequently, in fact, four months later on February 1, 1952, Mrs. Armstrong filed an action for divorce and ali-

mony in the Court of Common Pleas of Hamilton County, Ohio, against Armstrong, claiming that the Florida decree had been obtained by fraud, and praying for a divorce and alimony (R. 1-6). Armstrong entered his appearance, and in his answer among other things set up that the "Florida court had full and complete jurisdiction over the subject matter" and persons and that the Florida decree precluded any action in Ohio (R. 7).

The significant portion of the answer reads:

. . . . . .

"Defendant admits that on or about the sixteenth day of April, 1951, in case No. 140311, in chancery, on the docket of the Circuit Court of the Eleventh Judicial District, in and for Dade County, Florida, he filed a complaint in which he prayed for a divorce from plaintiff and in which complaint he made the allegations set forth on the second page of plaintiff's amended petition and admits that he appeared before a special master in chancery to whom said cause had been referred by said court and gave his testimony, tending to prove said allegations; and that thereafter said special master filed with said court his report, incorporating therein a transcript of the defendant's said testimony, in which report said special master found that this defendant was entitled to a decree for divorce; and that thereupon said cause came on to be heard by said court, upon said complaint, the testimony taken before the special master and upon the master's report, upon consideration whereof, on or about October 2, 1951, entered a decree granting a divorce in favor of this defendant from plaintiff. Defendant denies that the allegations set forth in his complaint in his suit for divorce as aforesaid were false; denies that the testimony that he gave in said cause was false, but on the contrary, says that said allegations and testimony were true.

"Defendant denies that plaintiff was not served with summons in said action pending in the Dade County

> Circuit Court, said defendant having been duly legally served with summons in said action according to the law of the state of Florida, and that by reason thereof said court had full and complete jurisdiction over the subject matter of said action and over the persons of this defendant and plaintiff."

Upon hearing, the Court of Common Pleas of Hamilton County, Ohio, held that it had to give full faith and credit to the divorce decree entered in Dade County, Florida, but under the doctrine of divisible divorce "held that were it not for the Florida decree Mrs. Armstrong would be entitled to a divorce," and proceeded to allow her alimony, consisting of considerable cash, jewelry and 1250 shares of General Motors stock, or approximately half of the property owned by Armstrong. This decree was entered July 18, 1953 (R. 16-19).

On appeal both the Court of Appeals of the First District of Ohio and the Supreme Court of Ohio affirmed the judgments *in toto*. It is interesting to note that in the Court of Appeals that court reviewed the evidence which had been introduced in both the Florida courts and the Ohio courts and made this statement in reference to the evidence:

> "At the trial of these issues, evidence was introduced from which the conclusion could be reasonably deduced that the plaintiff (Mrs. Armstrong) in this action had been guilty of gross neglect of duty and extreme cruelty, and that the Florida decree granting a divorce to the defendant herein, was supported by sufficient evidence. On the other hand, evidence of equal cogency was introduced from which it could be deduced that he had been guilty of gross neglect of duty and extreme cruelty, and that the decree awarding a decree to the plaintiff herein outweighed the evidence of the defendant, and would have justified a divorce in her favor." (Petition for Writ of Certiorari, p. 14a.)

We point this out to show that the Florida decree awarding a divorce to Armstrong and denying alimony to respondent was based on sufficient evidence, and the only reason it was not recognized in its entirety by the courts of Ohio, is that there was no personal service on Mrs. Armstrong, the respondent. The Ohio courts held that since service was only by publication in Florida, they could still award alimony to Mrs. Armstrong, the respondent, and attempted to distinguish *Thompson* v. *Thompson*, 226 U. S. 551. The courts did not consider that actual notice was given to respondent, and that she had full opportunity to be heard in the courts of the matrimonial domicile where the bulk of the property was located.

## SUMMARY OF ARGUMENT

### I

### The Ohio Court Erred in Refusing to Give Full Faith and Credit to the Entire Florida Decree.

The Florida decree (October 2, 1951) not only granted a divorce to the petitioner, but it also made a finding that the respondent was not entitled to alimony, and denied her alimony. The Ohio decree (July 18, 1953) gave full recognition to the Florida divorce, but refused to recognize the Florida decree denying alimony, and awarded 1250 shares of General Motors stock to the respondent as and for alimony. The Ohio decree was affirmed on appeal.

The Court below withheld full faith and credit from the *entire* Florida decree, because service was obtained by publication only, for two reasons:

1. A reliance on the ancients and functionless distinction between *in personam* and *in rem*, a distinction which this Court discarded as question-begging in *Mullane* v. *Hanover Bank & Trust Co.*, 339 U. S. 306, 312.

2. A misinterpretation of *Williams* v. *North Carolina*, 347 U. S. 287, as depriving the state of the matrimonial domicile of any interest in the financial aspect of a broken marriage. The misinterpretation of the *Williams* case is in direct contradiction to the holding of this Court in *Thompson* v. *Thompson*, 226 U. S. 551, a case on all fours with the instant case, and a case which this Court noted with approval as late as *Estin* v. *Estin*, 334 U. S. 541, 546, footnote 4.

To repudiate the *Thompson* case, and its approval in the *Estin* case, would impose chaos on a confused situation. Husbands and wives would thus be permitted to skip about the forty-eight states, litigating property rights piece-meal, in the forums of their choosing, or preventing litigation, until the opposite party could be starved into submission.

The existence of a marriage in Florida for over twenty uninterrupted years, the casting of ballots and paying of taxes there; the ownership of real and personal property in Florida, the unjustified flight from Florida of the wife, her service by publication, coupled with actual knowledge of the Florida proceedings, and her express refusal to defend the Florida action, all constitute a compliance with the rule of "minimum contracts" and of "traditional notions of fair play and substantial justice," and satisfy due process. *International Shoe Co.* v. *Washington*, 326 U. S. 310, 316; *Milliken* v. *Meyer*, 311 U. S. 457; 463; *Scholnik* v. *National Air Lines, Inc.*, 219 Fed. (2nd) 115, 118 (C. A. 6). Due process having been satisfied, the entire Florida decree is entitled to full faith and credit.

## II

## The Ohio Court Was Powerless to Award Alimony Out of the General Motors Stock.

The situs of this stock was Florida, that of its registered owner, the petitioner. *First National Bank of Bos-*

*ton* v. *Maine*, 284 U. S. 312, 328, 329; *Curry* v. *McCanless*, 307 U. S. 357.

Had the petitioner fled Florida, the respondent could have enforced an award of alimony against this stock and property in Florida. *Pennington* v. *Fourth National Bank*, 243 U. S. 269; *Boone* v. *Bank of Wachovia*, 163 Fed. (2nd) 809 (C. A. D. C.). Since the respondent here fled Florida, the Florida decree, which found her *not* entitled to alimony from this property, is entitled to recognition extraterritorially. If a court has the power to exclude unknown owners from stock ownership (*Standard Oil Co.* v. *New Jersey*, 341 U. S. 428; *Mullane* v. *Hanover Bank & Trust Co.*, 339 U. S. 306, 314), certainly the Florida court had the right to exclude a fleeing wife from ownership in this stock and deny alimony. The interests of the state of Florida were of such importance they were dominant, and, therefore, gave that state the right to adjudicate the marital status and property rights.

## ARGUMENT

### I

### The Ohio Court Erred in Refusing to Give Full Faith and Credit to the Entire Decree in Florida.

The Florida divorce decree entered on October 2, 1951, in which the petitioner, Armstrong, was granted a divorce, and his wife was denied alimony, was entitled to be given full faith and credit by the Ohio courts under the decision of this Court in *Thompson* v. *Thompson*, 226 U, S. 551. As we shall show, it did not present a situation where the doctrine of "divisible divorce," as expressed in the two *Williams* cases (317 U. S. 287 and 325 U. S. 286) and *Estin* v. *Estin*, 334 U. S. 541, was applicable.

We concede that when a husband goes to Nevada, establishes a residence, and obtains a divorce after constructive

service, the wife can still maintain an action for alimony, support or separate maintenance, in a number of states, including Ohio. See *Cox* v. *Cox*, 19 Ohio St. 502; *Slapp* v. *Slapp*, 143 Ohio St. 105. In some jurisdictions, alimony or maintenance to the wife is denied on the ground that such an award does not survive divorce. See *Gullet* v. *Gullet*, 149 Fed. (2nd) 17 (C. A. D. C.); *Rodda* v. *Rodda*, 183 Ore. 140, 200 Pac. (2nd) 616; *Loeb* v. *Loeb*, Vt. , 114 Atl. (2nd) 518.

In neither instance is a question of full faith and credit involved, but the question of whether a wife is able to obtain alimony after an *ex parte* divorce is controlled purely by local law. Florida holds to the doctrine that where the divorce is granted in another state an action for alimony does not survive, although the rule might be different if the divorce is obtained in a foreign country. Cf. *Stewart* v. *Stewart*, 155 Fla. 158, 155 So. 114, and *Pawley* v. *Pawley*, 46 So. (2nd) 464 (Fla.).

Nor is *May* v. *Anderson*, 345 U. S. 528, applicable, as it involved a case of the custody of a child, which Justice Frankfurter so well pointed out in his separate concurrence.

However, in this case, the husband remained in the matrimonial domicile, which was Florida, and obtained a divorce decree which also denied the wife alimony, while the wife fled to Ohio. Under *Thompson* v. *Thompson*, 226 U. S. 551, "the wife by her conduct forfeits her right to alimony under the laws of the state of the matrimonial domicile." *Estin* v. *Estin*, 334 U. S. 541, 546, Footnote 4.

The *Thompson* case has never been overruled, and this Court must have felt it was still in effect when Justice Douglas took occasion to distinguish it in the *Estin* case.

The Supreme Court of Ohio refused to follow the *Thompson* case, but applied the doctrine of "divisible divorce" because service was only by publication, and "a decree of that kind is one *in personam* and required either an appear-

ance by, or a lawful personal service on the wife in order to have extra-territorial effect." *Axmstrong* v. *Armstrong*, 162 Ohio St. 406.

The Supreme Court of Ohio did not examine closely into the salient facts. First, while service was only by publication on the wife as respondent, nevertheless she had *actual* notice of the action, and refused to appear. Secondly, the Florida court found that both parties were citizens and residents of Florida, which was the matrimonial domicile, and finally, the principal properties of Armstrong, from which alimony could be awarded, were in Florida.

In *Barber* v. *Barber*, 323 U. S. 77, 86, this Court said:

> "The judgment of a court of general jurisdiction of a sister state duly authenticated is *prima facie* evidence of the jurisdiction of the court to render it, and the right which it purports to adjudicate." *Adam* v. *Saenger*, 303 U. S. 62 and cases cited.

Under this rule Ohio was required to give full faith and credit to the entire Florida degree (see R. 239-249) unless it could find that the respondent was denied alimony without due process of law contrary to the Fourteenth Amendment. This, therefore, requires an examination of the decree itself to ascertain if the Florida decree was subject to a collateral attack in the Ohio courts.

In the Florida decree entered by the Circuit Court of Dade County on October 2, 1951, it is found:

> "This court makes a specific finding that both the plaintiff and the defendant herein were citizens and residents of the State of Florida, and that when the defendant left the matrimonial domicile in October 1950, she did so without cause or without the legal right to separate and set up her own domicile. Under these circumstances the Court finds that the wife defendant, Mary R. Armstrong did not have the right

to separate and claim a separate legal domicile, and in truth and in fact her domicile was that of her husband." (R. 248, 249.)

It is perfectly clear that if Mrs. Armstrong had entered her appearance or been personally served the validity of the Florida decree could not be questioned. *Davis* v. *Davis*, 305 U. S. 32.

Is the law such that personal service is in all cases necessary to support a decree either awarding alimony to a wife or denying alimony to her? We contend, particularly when she leaves from the matrimonial domicile where the property is located, and when she is duly served by publication, and has actual notice of the pendency of the proceedings, but deliberately refuses to appear and a decree denying her alimony or maintenance is entered, due process of law is afforded.

**Distinctions between decrees** *in personam* and *in rem* and attempts to classify actions on such categories have long since lost their validity. Such distinctions do little more than beg the issue. See *Mullane* v. *Hanover Bank & Trust Co.*, 339 U. S. 306, 312.

It has been settled that personal service is not necessa to obtain a valid personal judgment against a resident a state. The rule laid down in *Pennoyer* v. *Neff*, 95 U. S. 714, was confined generally to nonresidents, who are served constructively. However, today, provided the method of imparting notice to a defendant is reasonable and has been strictly followed, personal service is not essential to effective service on a nonresident.

The broad language of *Pennoyer* v. *Neff*, 95 U. S. 714, construed as prohibiting acquisition of personal jurisdiction over any person outside of the state, has been reexamined in *Milliken* v. *Meyer*, 311 U. S. 457, and it was held that domicile alone was sufficient for the purpose of

a personal judgment by means of appropriate substituted service. This Court at page 462 said:

> "Domicile in the state is alone sufficient to bring an absent defendant within the reach of the state's jurisdiction for purposes of a personal judgment by means of appropriate substituted service."

[Followed in *Allen* v. *Superior Court*, 41 Cal. (2nd) 306, 259 Pac. (2nd) 905; *Myrick* v. *Superior Court*, 41 Cal. (2nd) 519, 261 Pac. (2nd) 255.]

The best summary of the present state of the law is found in *Scholnik* v. *National Air Lines, Inc.*, 219 Fed. (2nd) 115, 118 (C. A. 6):

> "Historically, the jurisdiction of a court to render a judgment in personam against a defendant depended upon the presence of the defendant within the territorial jurisdiction of the court. *Pennoyer* v. *Neff*, 5 Ott. 714, 95 U. S. 714, 24 L. Ed. 565. The strictness of that rule has given away somewhat to the present view that due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *International Shoe Co.* v. *State of Washington*, 326 U. S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95; *Milliken* v. *Meyer*, 311 U. S. 457, 463, 61 S. Ct. 339, 85 L. Ed. 278."

These cases show that the rule of "minimum contacts" and "traditional notions of fair play and substantial justice" are not just applicable to foreign corporations, but apply with equal force to nonresident individuals as well. Extra-territorial service upon an absent resident, who is otherwise subject to the jurisdiction of a state, has been recognized as conferring jurisdiction over his person in conformity with due process of law.

It is our position that a valid *ex parte* decree, rendered by a court at the matrimonial domicile, which under the law of that place has the effect of terminating the wife's right to alimony, is entitled to recognition in that respect, particularly when she had actual notice of the action by service, and deliberately refused to appear. Cf. 28 A. L. R. (2nd) 1393.

The Circuit Court of Dade County, Florida, found that the matrimonial domicile of the parties was not only in Florida, but that they were both citizens and residents of Florida. The record shows that the respondent was not only served by publication in accordance with the laws of Florida (R. 246), but that she had *actual notice* of the pendency of the action, and deliberately refused to appear and contest (R. 303).

In *McIntyre* v. *McIntyre,* 53 So. (2nd) 824 (Fla.), the court held that "to effect a change of domicile there must be a removal and an intent." The fact that Mrs. Armstrong left Florida would not rebut the presumption that her domicile was still in Florida particularly when the property was still in the state. In fact the Florida court found that she was still domiciled there even though she had fled to Ohio.

Coupled with that fact, the principal real estate was in Florida, and all of the stocks, including 2250 shares of General Motors Corporation stock, were owned by petitioner, who was a resident of Florida. Had Armstrong, the petitioner, fled from Florida it is clear that Mrs. Armstrong could have enforced an alimony decree in Florida against the property there. *Pennington* v. *Fourth National Bank,* 243 U. S. 269; *Burkhard* v. *Circuit Court,* 146 Fla. 457; *Lucian* v. *Southern Ohio Bank & Trust Co.,* 156 Fla. 370.

We maintain that the service, coupled with the actual notice of the pendency of the action, and the fact the property was in Florida made it clear that the denial of alimony

was after due process of law, and does not "offend traditional notions of fair play and substantial justice."

If the notice given the respondent, Mrs. Armstrong, satisfied due process, then clearly the Florida decree was entitled to be afforded complete full faith and credit by the courts of Ohio.

The Supreme Court of Ohio stated that the factor of "matrimonial domicile" is no longer regarded as important since the decision in *Williams* v. *North Carolina*, 317 U. S. 287. However, such a conclusion can not be justified from a reading of the cases decided by this Court. The doctrine of matrimonial domicile has not been entirely discarded by this Court. Cases such as *Estin* v. *Estin*, 334 U. S. 541, and *Krieger* v. *Krieger*, 334 U. S. 555, permitted recognition of migratory divorces. It thus took away from the state of the matrimonial domicile *exclusive* jurisdiction in divorce. The cases were never intended, however, to limit the state of the matrimonial domicile in its right to entirely settle marital difficulties of its own citizens, and thus overrule *Thompson* v. *Thompson*. That is why Mr. Justice Douglas was particular in distinguishing the facts in the *Thompson* case in *Estin* v. *Estin*. We maintain that Florida, as the matrimonial domicile, particularly when the defendant had actual notice and opportunity to appear, had the right to settle all marital difficulties, and its decrees should be given full faith and credit by all other states. In a splendid article, J. H. C. Morris of Oxford University points out that this Court has never abandoned completely the significance of matrimonial domicile in divorce and alimony actions. See "*Divisible Divorce*," 64 Harv. Law Rev. 1287.

If the right of the state of the matrimonial domicile to fully adjudicate marital difficulties were abandoned, let us examine the chaotic conditions that will result. A wife living in Cincinnati, Ohio, could go to Kentucky, West Vir-

ginia, or Indiana and stay there so that service could be made only by publication, and the husband could never get his marital matters completely settled. In fact, no state in the country could completely settle them. If the right of the matrimonial domicile to completely settle all marital difficulties is denied, the result to the wife would be more tragic. A husband living with his wife in Kentucky, the matrimonial domicile, could take his stocks and bonds and cross the river to Cincinnati, Ohio. Since the wife could only obtain service by publication, she could never obtain any alimony as the courts of the state of the matrimonial domicile could not adjust the financial affairs between the husband and wife.

We maintain that a simple rule of granting entire full faith and credit to the decrees of the matrimonial domicile, particularly when the fleeing spouse had actual notice and full opportunity to appear, should be adopted.

Due process of law is not dependent upon personal service. Rather it depends upon the quality and nature of the contacts, ties or relations to the fair and orderly administration of the laws of the state. If the motorist by merely using the highways of the state consents to jurisdiction in tort actions (*Hess* v. *Powlowski*, 274 U. S. 352), certainly married couples, who live for twenty-one years in one jurisdiction, have likewise consented to the juurisdiction of the courts of that state to adjudicate their rights. Such jurisdiction should continue until one or the other has acquired a domicile elsewhere. It should not be defeated merely by the flight of one spouse, particularly when that spouse has actual notice of the pendency of the action. The acquisition of a new domicile was never claimed by Mrs. Armstrong, the respondent, either when the Florida Action was filed, or when it was tried.

*Pawley* v. *Pawley* (Florida), 46 So. (2nd) 464, cited by the Supreme Court of Ohio, deals with a divorce obtained

in Cuba, a foreign country and not a sister state. As the opinion shows it involves a question of comity, and not one of "full faith and credit" under constitutional demand. It involved a case where the husband, a citizen of the United States, fled to a foreign country, and did not remain in the matrimonial domicile as the petitioner did in this case. The earlier case of *Stewart* v. *Stewart*, 155 Fla. 158, states the correct rule when a situation such as now before the court arises.

To affirm the decision of the Supreme Court of Ohio would upset the well-established rules, not only by limiting the jurisdiction of the courts of the matrimonial domicile, but also by saying that what satisfied due process as to notice in other civil actions does not apply in alimony actions. The *Thompson* case has been a precedent for many years, and well it should be. In that case, after reviewing the law, Justice Pitney said:

> ". . . the state of Virginia had jurisdiction over the marriage relation, and the proper courts of that state could proceed to adjudicate respecting it upon grounds recognized by the laws of that state, although the wife had left the jurisdiction and could not be reached by formal process."

Here we have even stronger facts, because here was actual notice, and Florida as well as Virginia had sufficient dominant interests to completely adjudicate the marital affairs of those who had a matrimonial domicile within its borders. When the adjudication was made after the respondent had notice and opportunity to contest, it should be final, and respondent at a later date should not be permitted to relitigate either the issues of divorce or of alimony in the courts of Ohio.

## II

### The Ohio Court Could Not Award Alimony Out of the Stock of General Motors Corporation Owned by Petitioner.

The Ohio court, after recognizing the validity of the decree for divorce in Florida, applied the doctrine of divisible divorce, and as alimony ordered petitioner to transfer to the respondent 1250 shares of the capital stock of General Motors Corporation (R. 19). We contend that in any event the court had no jurisdiction to make such an award, if it gave full faith and credit to the decree of October 2, 1951, entered in Florida.

The decree in Florida shows that this stock was in the name of the petitioner (R. 247-248). Despite the fact that the certificates were purloined by the respondent, nevertheless the situs of the stock under the maxim of *mobilia sequuntur personam*, was in Florida, the domicile of the owner. Cf. *First National Bank of Boston* v. *Maine*, 284 U. S. 312, 328, 329; *Curry* v. *McCanless*, 307 U. S. 357.

Had Armstrong been absent from Florida Mrs. Armstrong could have, if she had grounds, enforced an alimony award in Florida. Personal service is not necessary to enforce an alimony award against real estate or intangible property in the state. *Pennington* v. *Fourth National Bank*, 243 U. S. 269; *Boone* v. *Bank of Wachovia*, 163 Fed. (2nd) 809 (C. A. D. C.).

It would seem that the converse of this should be true. The Florida court specifically denied the respondent any alimony out of the real estate and property of the petitioner. In fact the Florida court ordered respondent to return the stocks and bonds to petitioner (R. 248). We contend that because of such a holding the Court of Common Pleas of Hamilton County, Ohio, did not have the right to make an award to the respondent of 1250 shares

of stock of the General Motors Corporation. That was a relitigation of the issue determined in Florida. The Florida court having jurisdiction over the *res* had a right to determine ownership whether the respondent had been personally served with summons or not.

If a judgment forfeiting stock of unknown owners after service by publication is entitled to full faith and credit (*Standard Oil Company* v. *New Jersey*, 341 U. S. 428; *Mullane* v. *Hanover Bank & Trust Co.*, 339 U. S. 306, 314), then certainly a fleeing resident can be denied any interest in property even though service is only by publication. As said by the late Justice Jackson in *Mullane* v. *Hanover Bank & Trust Co.*, 339 U. S. 306, 314:

> "Personal service has not in all circumstances been regarded as indispensable to the process due residents, and it has more often been held unnecessary as to nonresidents."

The decree in Florida held that "the stock certificates and bonds registered in the name of the plaintiff, the possession of which has been taken by the defendant against the consent of the plaintiff are the property of the plaintiff" and the defendant (the respondent) was ordered to return them (R. 248). The Ohio court then proceeds to award alimony in the amount of 1250 shares of General Motors stock to the respondent (R. 18) contrary to the decree in Florida that no alimony be awarded out of the property (R. 249).

We maintain that Florida had a right to enter such a decree as to real estate and intangibles within its jurisdiction. Florida had a right to tax Armstrong on the intangibles he owned, even though the actual certificates were outside of the state. It had a right to adjudicate the inter-

ests of the parties in property, and that adjudication was entitled to full faith and credit.

This is particularly true since the respondent, Mrs. Armstrong, did not claim any property interest in the certificates, herself, but only the right to be paid or awarded alimony out of them (R. 5). Ohio is not, and has never been a community property state, and the only claim of respondent was that as a wife she had helped to contribute to the funds her husband had accumulated (R. 4).

Under these circumstances when Mrs. Armstrong refused to return to Florida and litigate the issues of alimony, she was foreclosed as to any rights not only as to real estate, but also as to any intangibles which were owned by the petitioner. The issue once litigated could not be re-litigated in Ohio.

## CONCLUSION

If the service by publication and the mailing of notice of an action pending in the matrimonial domicile of the parties satisfied due process, then obviously the respondent should not have been permitted to re-litigate the issue of alimony in the courts of Ohio. The courts of Ohio under such circumstances were required under the Constitution of the United States to give entire full faith and credit to the entire Florida decree.

However, when it is pointed out that the principal property holdings were in Florida, the matrimonial domicile, the Ohio courts should not permit a fleeing spouse to make a collateral attack upon a binding decree of a sister state.

If this cause is not reversed, then merely by flight a husband or wife can prevent the other party from completely settling all marital difficulties. The matrimonial domicile of the parties is the one place where binding decrees should be recognized by all sister states.

We respectfully submit, the judgments of the Ohio courts pertaining to alimony for respondent must be reversed.

Respectfully submitted,

ROBERT N. GORMAN,
JAMES N. HENGELBROK,
808 Traction Building,
Cincinnati 2, Ohio,

JULIUS R. SAMUELS,
918 First National Bank Bldg.,
Cincinnati 2, Ohio,
*Attorneys for Petitioner.*